

Message Text

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E.O. 11652: N/A

TAGS: SENV, CA

SUBJECT: ST. MARY'S ICE BOOM

1. US AND CANADIAN DELEGATIONS MET ON OCTOBER 17 IN WASHINGTON TO DISCUSS THE US WINTER NAVIGATION BOARD'S ST. MARY'S DEMONSTRATION ICE BOOM. US OPENING STATEMENT INDICATED THAT WE CONTINUED TO HOLD THE VIEW THAT AN APPLICATION TO THE INTERNATIONAL JOINT COMMISSION FOR THE BOOM IS NOT REQUIRED UNDER ARTICLE III OF THE BOUNDARY WATERS TREATY, SINCE THE WORKS IN QUESTION ARE FOR THE BENEFIT OF COMMERCE AND NAVIGATION WHOLLY ON THE UNITED STATES SIDE OF THE BOUNDARY WHICH WILL NOT MATERIALLY AFFECT THE LEVELS AND FLOWS OF BOUNDARY WATERS IN CANADA. US OPENING ALSO STRESSED POSITIVE EFFECTS OF PROJECT INCLUDING IMPROVED FERRY SERVICE TO US SUGAR ISLAND, IMPROVED CONDITIONS FOR NAVIGATION, AND POTENTIAL DECREASE

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IN ICE JAMS WHICH COULD CAUSE LOSS OF HEAD AT UPSTREAM

POWER PLANTS.

2. CANADIAN OPENING REMARKS INDICATED GOC'S STRONG VIEW THAT IJC DID NOT HAVE JURISDICTION OVER THE WORKS IN QUESTION UNLESS THERE WAS AN APPLICATION OR REFERENCE TO THE COMMISSION. GOC REPRESENTATIVES INDICATED POSSIBLE CONCERN ABOUT THE PROJECT'S EFFECTS ON WATER LEVELS IN

SAULT STE. MARIE HARBOR, EFFECT ON REGULATION OF LAKE SUPERIOR, AND THE LIKELIHOOD THAT BOOM FAILURE COULD RESULT IN MORE SEVERE EFFECTS THAN NATURAL ICE JAM.

3. US REPRESENTATIVES BRIEFED THE CANADIAN DELEGATION IN DETAIL ON THE LIKELY EFFECTS OF THE BOOM, AND INDICATED THAT IF AN ICE JAM DID FORM, COAST GUARD ICE BREAKERS, CORPS VESSEL, AND WORK CREWS WOULD BE READILY AVAILABLE TO CLEAR JAM. IT WAS ALSO POINTED OUT THAT THE FIRST PARTIES AFFECTED BY POTENTIAL FLOODING WOULD BE A PRIVATE US POWER PLANT AND THE US-OWNED POWER PLANT. COLONEL HAYS, CORPS OFFICER RESPONSIBLE FOR THE BOOM, IS ALSO RESPONSIBLE FOR THE US POWER PLANT. IF FLOODING DID OCCUR, THE TWO US POWERPLANTS WOULD LIKELY SHUT OFF FLOWS THROUGH THEIR POWER CANALS RATHER THAN ALLOW FLOODING OF THEIR PHYSICAL PLANTS. IN ANY CASE, IT DOES NOT APPEAR THAT UNDER ANY BUT THE MOST EXTRAORDINARY CIRCUMSTANCES WOULD AN ICE JAM CAUSE FLOODING ON THE CANADIAN SIDE.

4. US SIDE POINTED OUT THAT CANADIAN CONCERN WAS IN REALITY RELATED TO THE PASSAGE OF COMMERCIAL VESSELS THROUGH THE CHANNEL UNDER ICE CONDITIONS RATHER THAN TO THE BOOM ITSELF. IN THIS RESPECT, THE US SIDE SUGGESTED GREATER CANADIAN PARTICIPATION IN THE WINTER NAVIGATION BOARD'S ACTIVITIES AND LIKEWISE INDICATED A WILLINGNESS TO CONSULT ABOUT THIS AND OTHER PROBLEMS RELATED TO WINTER NAVIGATION. WE ALSO INDICATED THAT THE BOOM WAS A DEMONSTRATION PROGRAM, AND AGREED TO INFORM THE GOC IF WE ANTICIPATED PERMANENT IMPLEMENTATION OF THE BOOM.

5. US SIDE RESPONDED TO CANADIANS' INTEREST IN LIABILITY ISSUES BY NOTING THAT WINTER NAVIGATION BOARD HAD LEGAL UNCLASSIFIED

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COMMITTEE STUDYING QUESTIONS POSED BY EXTENDED NAVIGATION IN GENERAL, AND THAT IJC HAD SHOWN CONSISTENT INTEREST IN THIS SUBJECT. WE POINTED OUT THAT DESPITE CONSIDERABLE EXPERIENCE WITH ICE-BREAKING AND BOOM OPERATION IN THE GREAT LAKES, LAWYERS AT COAST GUARD AND CORPS FOLLOWING THIS SUBJECT WERE AWARE OF FEW PAST CLAIMS RELATING TO ICE MANAGEMENT. US SIDE UNDERTOOK TO PROVIDE LEGAL MEMO PREPARED BY CORPS SETTING OUT LIABILITY OF CORPS IN

CONNECTION WITH PROJECT WITH RESPECT TO CANADIAN INTERESTS, AND PAST PRACTICE REGARDING CANADIAN CLAIMS. WE NOTED THAT UNDER US LAW, CONSEQUENTIAL DAMAGES FROM NAVIGATIONAL IMPROVEMENTS ARE NOT COMPENSABLE, BUT THAT DAMAGES RESULTING FROM TORTIOUS CONDUCT (AT LEAST ABOVE HIGH WATER LINE) WOULD BE, AND THAT CANADIANS MIGHT HAVE ACCESS TO US ADMINISTRATIVE AND JUDICIAL REMEDIES WITH RESPECT TO CLAIMS SOUNDING IN TORT BASED ON OPERATION OF BOOM (WHICH IS ENTIRELY IN US WATERS).

6. THE US SIDE SUMMARIZED THE MEETING BY REITERATING THE VIEW THAT TRANSBOUNDARY IMPLICATIONS OF THE PROJECT WERE DE MINIMIS, THAT WE WOULD QUICKLY FORWARD FURTHER INFORMATION ON LIABILITY QUESTIONS TO THE GOC, AND THAT WE WOULD WELCOME INCREASED CANADIAN PARTICIPATION ON THE WINTER NAVIGATION BOARD AND CONSULTATIONS ON ITS ACTIVITIES. WE ALSO POINTED OUT THAT CANADA SHOULD TAKE INTO ACCOUNT ITS STRONG ECONOMIC INTERESTS IN WINTER NAVIGATION IN THE GREAT LAKES AND ELSEWHERE.

7. THE CANADIANS CLOSED BY REITERATING THEIR POSITION WITH RESPECT TO IJC JURISDICTION AND INDICATED THAT IF LIABILITY COULD BE ADEQUATELY ADDRESSED, GOC WOULD NOT LIKELY POSE FURTHER OBJECTION TO THE ST. MARY'S DEMONSTRATION BOOM. INGERSOLL

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